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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

DAVID TRZEBUCKI and **CHERYL TRZEBUCKI**, Individually and Derivatively on Behalf of Nominal Defendant **ENRON CORP**. ,	CIVIL ACTION NO. 5 01 C V 308
Plaintiffs,	
v.	
ANDREW S. FASTOW, KENNETH L. LAY, JEFFREY J. SKILLING, ROBERT A. BELFER, ROBERT P. BLAKE, JR., RONNIE C. CHAN, JOHN H. DUNCAN, JOHN MENDELSOHN, WENDY L. GRAMM, PAULO V. FERRAZ PEREIRA, ROBERT K. JAEDICKE, CHARLES A. LEMAISTRE, FRANK SAVAGE, JOHN WAKEHAM, HERBERT S. WINOKUR, JR., ARTHUR ANDERSEN LLP, ANDERSEN WORLDWIDE SOCIETE COOPERATIVE, A SWISS COOPERATIVE, DYNEGY, INC., MICHAEL KOPPER, BEN GLISAN, KATHY LYNN, ANNE YEAGER, and KRISTINA MORDAUNT,	**SHAREHOLDER DERIVATIVE ACTION**
Defendants,	
-and-	**JURY TRIAL DEMANDED**
ENRON CORP., an Oregon Corporation	
Nominal Defendant.	

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiffs, by their counsel, submit this Verified Shareholder Derivative Complaint against Defendants herein. All allegations made in this Complaint are based on information and belief, except those allegations that pertain to the named Plaintiffs and their counsel, which are based on

¶¶58-59);

7. The principle of completeness, which means that nothing is left out of the information that may be necessary to insure that it validly represents underlying events and conditions was violated (FASB Statement of Concepts No. 2, ¶79); and

8. The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered was violated. The best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent (FASB Statement of Concepts No. 2, ¶¶95, 97).

94. The Director and Executive Defendants and Andersen have offered no explanation or justification for their failure in causing Enron to not consolidate the results of the "special purpose entities" which the Company has now concluded should have been consolidated. Enron's November 8 statement did not suggest that this change in accounting treatment is based on information that the Director and Executive Defendants did not have in their possession at the time the financial statements were originally issued. It appears that the Director Defendants have had Enron belatedly concede that these entities should have been consolidated only in response to intensive media and investor attention on these entities, following the disclosure on October 16, 2001 that Enron was taking a $1.01 billion charge and would report a third quarter loss of $618 million.

95. Further, the undisclosed adverse information concealed by Defendants during the Relevant Period is the type of information which, because of SEC regulations, regulations of the national stock exchanges and customary business practice, is expected by investors and securities analysts to be disclosed and is known by corporate officials and their legal and financial advisors to

be the type of information which is expected to be and must be disclosed.

96. Defendant Andersen issued an audit opinion on each of Enron's financial statements for the years 1997 through 2000, expressing the opinion that the financial statements were presented fairly, in all material respects, in accordance with GAAP and that Andersen's audits were in conformance with GAAS.

97. All Defendants acted in breach of their duties to Enron and its shareholders in issuing Enron's financial statements or, in the case of Andersen, issuing its audit opinions on the financial statements, as shown by at least the following circumstances.

98. The transactions involving the special purpose entities were related party transactions, which require careful scrutiny and are subject to explicit disclosure rules.

99. The transactions also warranted careful scrutiny because the special purpose entities were created by the Director and Defendants and defendant Skilling for the express purpose of keeping debt off Enron's balance sheet or entering into transactions with Enron. Transactions with the special purpose entities were entered into primarily for accounting reasons and therefore the accounting treatment should have received particularly close scrutiny by Enron and Andersen.

100. LJM1 and LJM2 and other SPEs which the Director Defendants and defendant Skilling caused to be created have engaged in billions of dollars of complex hedging transactions with Enron - in which Enron had adverse interests. By their very nature, Enron's transactions with these entities, if successful, would result in losses to Enron. Because defendant Fastow (and the other Employee Defendants) were on both sides of the transactions between Enron and certain SPEs, the terms of those transactions were not at arm's-length and there was no reasonable method to ensure that the terms of those transactions were equivalent to transactions that could have been engaged in with

third parties. Therefore, the relationship between Enron and these entities should have been scrutinized carefully by Andersen.

101. In a conference call on October 22, 2001, Defendant Lay stated that "even the . . . auditors realized that there would be an apparent conflict of interest" between Enron and certain SPEs.

102. The New York Times called Enron's transactions with the special purpose entities "some of the most opaque transactions with insiders ever seen."

103. Beginning on October 18, 2001, Enron's stock began to spiral down as investors expressed a lack of understanding of Enron's transactions with the SPEs and a concern over Enron's exposure in these transactions. On November 7, 2001, Enron common stock traded at a low of $7.00 per share – a decline of approximately 92% from its high price of $90.00 on August 23, 2000.

104. Certain Defendants have materially benefitted from having sold Enron common stock at inflated prices. Defendant Lay, for example, sold approximately $26 million of Enron stock in 1999 and over $300 million in 2000. He sold $25.7 million of Enron stock in 2001 before the shocking disclosure on October 16. Defendant Skilling sold $9.8 million of Enron stock in 2001 prior to this resignation in August.

105. In total, Enron insiders sold 5.8 million shares of Enron stock for approximately $449 million in 2000, and 3.4 million shares for approximately $123 million in 1999.

FRAUDULENT SCHEME AND COURSE OF BUSINESS

106. The Director and Executive Defendants are liable for (a) violating GAAP or causing Enron to violate GAAP (b) making false statements, and (c) failing to disclose adverse facts known to him or her about Enron and/or its SPEs.

107. During the Relevant Period, the Director, Executive, and Employee Defendants violated GAAP or caused Enron to violate GAAP; materially misled the investing public; caused the price of Enron common stock to be inflated; publicly issued false and misleading statements; and, omitted material facts necessary to make Defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, including, inter alia:

(a) That the Company's financial statements were not prepared in accordance with GAAP and in accordance with the federal securities laws and SEC regulations concerning fair reporting;

(b) That the Company's statements as to the Company's earnings and stock value were lacking in reasonable basis at all relevant times for the reasons set forth in ¶ 91 (1)-(8); and

(c) That Andersen's audits failed to conform to GAAS.

108. These Defendants failed to disclose that the special purpose entities did not meet certain accounting requirements, that their financial results should have been consolidated in Enron's financial statements, recognized an increase in shareholder equity when they issued stock in exchange for a note in violation of GAAP, as well as the true nature and details of all of the related party transactions.

ANDERSEN'S WRONGDOING

109. Andersen issued unqualified audit opinions (the "Audit Opinions") on Enron's financial statements for fiscal 1997, 1998, 1999 and 2000 and stated that Andersen's audits were performed in conformity with GAAS and, inter alia, that in Andersen's opinion the financial statements

"present fairly" Enron's financial position, results from operations and cash flows in conformity with GAAP for the fiscal years ended December 31, 1997, December 31, 1998, December 31, 1999, and December 31, 2000. Additionally, Andersen conducted quarterly reviews of Enron's interim financial statements. However, as alleged herein, Andersen's Audit Opinions were false and misleading because the financial statements upon which Andersen issued its unqualified opinions concerning, inter alia, the way in which Enron accounted for the financial results of the special purpose entities, recognition of the issuance of stock in exchange for note, and other related party transactions which were material violations of GAAP.

110. Andersen conducted audit examinations and participated in investigations of Enron's business, operations, financial, accounting and management control systems. In the course of these audits and investigations, Andersen knew its obligations under GAAS, detailed below, but simply ignored them.

111. Had Andersen conducted its audits in accordance with GAAS, it would not have certified Enron's financial statements as presented. Andersen's representations that the audits conformed to GAAS were false and misleading for, inter alia, the following reasons:

(a) Andersen violated GAAS General Standard No. 2 by holding itself out to the public as being independent, when it lacked independence in fact, and at a minimum, it lacked the appearance of independence due to its significant non-audit services provided to Enron.

(b) Andersen violated GAAS General Standard No. 3 that requires that due professional care must be exercised by the auditor in the performance of the audit and the preparation of the report. Andersen failed to exercise due care in performing its audit and preparing its report;

(c) Andersen violated GAAS Standard of Field Work No. 3 that requires sufficient, competent evidential matter to be obtained through inspection, observation, inquiries and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit. Andersen failed to obtain sufficient, competent evidential materials as to the adequacy of asset valuations, including reserves, and completeness of recorded expenses;

(d) Andersen violated GAAS Standard of Reporting No. 1 which requires the auditor, in preparing the report, to state whether the financial statements are presented in accordance with GAAP; and

(e) Andersen violated GAAS Standard of Reporting No. 3 which requires informative disclosures in the financial statements which are to be regarded as reasonably adequate unless otherwise stated in the report.

112. In the course of issuing its unqualified audit opinions as to the financial statements, and prior to the Company's public announcement of these results, Andersen was required to adhere to all of the standards of GAAS, including the requirement that the financial statements comply in all material respects with GAAP. In issuing its unqualified opinions on the financials statements, Andersen's audits and reports therein represented an extreme departure from GAAS, and the manner in which Enron's financial results were reported as part of the Company's financial statements represented an extreme departure from GAAP.

113. SAS No. 82, adopted by the American Institute of Certified Public Accountants (AICPA) entitled "Consideration of Fraud in a Financial Statement Audit" contains the following definition: "Misstatements arising from fraudulent financial reporting are intentional misstatements or omissions of amounts or disclosures in financial statements to deceive financial statement users. Fraudulent financial reporting may involve acts such as the following:

manipulation, falsification or alteration of accounting records or supporting documents from which financial statements are prepared;

misrepresentation in, or intentional omission from, the financial statements of events, transactions, or other significant information quantifying accounting irregularities. During the investigation certain misstatements were identified; and

intentional misapplication of accounting principles relating to amounts, classification, manner of presentation, or disclosure."

114. Andersen was required by GAAS to (1) have the financial statements revised, (2) issue a qualified or adverse opinion, or (3) withdraw from the audit and notify the SEC. Andersen did none of these, contrary to GAAS.

ANDERSEN'S CONDUCT WAS RECKLESS OR INTENTIONAL

115. Through its knowing or reckless conduct, Andersen violated GAAS for the following reasons:

(a) Andersen failed to perform its work with due care, and to plan and supervise its audit adequately, as required by GAAS. Under the "Third General Standard" of Statement on Auditing Standards ("SAS") No. 2, "[d]ue professional care is to be exercised in the performance of the audit and the preparation of the report."

(b) Andersen failed to obtain sufficient competent evidential matter to afford a reasonable basis for its audit opinion, required by GAAS. Under the "Third Standard of Field Work" of SAS No. 1, "[s]ufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion. When management omits disclosure required by GAAP from its financial statements, the auditor must express a qualified or adverse opinion and should provide the disclosure required in its audit report. Under SAS No. 32, "if management omits from the financial statements, including the accompanying notes, information that is required by generally accepted accounting principles, the auditor should express a qualified or an adverse opinion and should provide the information in his report, if practicable, unless its omission from the auditor's report is recognized as appropriate by a specific Statement on Auditing Standards." Similarly, under SAS No. 58, "[r]estrictions on the scope of his audit, whether imposed by the client or by circumstances, such as . . . the inability to obtain sufficient competent evidential matter . . . may require him to qualify his opinion or to disclaim an opinion. In such instances, the reasons for the auditor's qualification of opinion or disclaimer of opinion should be described in his report."

116. Thus, GAAS required Andersen to express either a qualified or adverse opinion on Enron's financial statements or withdraw from the engagement. The failure of Andersen to do so, in light of the clear warnings raising red flags about the validity of the Company's financial statements, reflects its knowing or reckless conduct, which is a violation of federal securities laws and which resulted in significant damage to Enron.

117. Defendant Andersen, by virtue of its position as independent auditor and as a provider of substantial non-audit services to Enron, had access to key employees of the Company and continual access to and knowledge of Enron's confidential corporate, financial, operating, and business information at all relevant times. As a result of the services it provided to Enron, Andersen personnel were frequently present at Enron's corporate headquarters throughout each year. Andersen knew or recklessly disregarded Enron's true financial and operating condition, and intentionally or recklessly failed to take steps which, as Enron's auditor, it could and should have taken to fully and fairly disclose to the public. Andersen falsely represented that its audits of Enron's 1997 - 2000

financial statements had been conducted in accordance with GAAS and wrongfully issued "clean" or unqualified opinions or certifications that those financial statements fairly presented Enron's financial condition and results of operations in conformity with GAAP.

118. GAAS provides that an audit report state whether a company's financial statements are presented in conformity with GAAP. The Enron audit reports issued and signed by Andersen during the Relevant Period stated that Enron's financial statements for each reported period were presented in conformity with GAAP when such financial statements violated GAAP. Had these financial statements been prepared in accordance with GAAP, Enron's net income, earnings per share, total assets, and stockholder's equity would have been materially reduced.

119. Andersen either knew or recklessly disregarded the facts which indicated that Enron's financial statements were materially false and misleading. As a result, Andersen issued unqualified opinions on Enron's fiscal 1997, 1998, 1999 and 2000 financial statements when such financial statements materially overstated the Company's net income, earnings per share, total assets and stockholders' equity.

<u>ANDERSEN FAILED TO PLAN AND SUPERVISE ITS AUDIT ADEQUATELY</u>

120. GAAS provides that an audit is to be adequately planned, and any assistants are to be properly supervised. Audit planning involves developing an overall strategy for the expected conduct and the scope of the audit. In planning an audit, the auditor must obtain knowledge of the matters which relate to the nature of the entity's business, its organization, and operating characteristics. The auditor must also design the audit to provide reasonable assurance of detecting errors and irregularities – intentional misstatements – that are material to the financial statements. In addition, an auditor is required to apply analytical procedures in planning an audit. Analytical

procedures involve comparisons of recorded amounts or ratios developed from recorded amounts.

121. Supervision involves directing the efforts of assistants involved in accomplishing the objectives of the audit and determining whether those objectives were accomplished. The work performed by each assistant must be reviewed for adequacy and evaluated to determine whether the audit results are consistent with the conclusions expressed in the auditor's reports.

122. In connection with its audit of Enron's financial statements for each fiscal year during the Relevant Period, Andersen was required by GAAS to obtain knowledge of Enron's business, and apply analytical procedures in planning for its audit. In the course of performing such procedures, Andersen knew, or recklessly disregarded, the facts referenced in ¶¶ 108-119, above, which indicated that it should perform an extensive audit of Enron's assets, net income, and expenses.

123. Accordingly, Andersen either knew or was recklessly indifferent to the fact that the special purpose entities did not meet certain accounting requirements and that their financial results should have been consolidated in Enron's financial statements, that Enron recognized an increase in shareholders' equity upon the issuance of stock in exchange for a note, and failed to properly scrutinize the related party transactions, among other matters, in all in violation of GAAP. Despite these obvious issues, Andersen failed to develop an adequate strategy for the conduct and scope of the audit of Enron's assets, net income and expenses. Further, Andersen failed to supervise and evaluate the work of its assistants in order to determine whether they adequately audited Enron's reported assets, net income and expenses. In addition, Andersen failed to adequately plan its audit and properly supervise the work of its assistants so as to establish and carry out procedures reasonably designed to detect the existence of irregularities which materially affected Enron's financial statements.

ANDERSEN FAILED TO OBTAIN SUFFICIENT COMPETENT EVIDENTIAL MATTER

124. GAAS requires that an independent auditor obtain sufficient competent evidential matter to afford a reasonable basis for an opinion regarding the audited financial statements. Most of an auditor's work in forming an opinion of a financial statement consists of obtaining and evaluating evidential matter concerning the assertions contained in the financial statements. Management's representations are not a valid substitute for the application of audit procedures to form a reasonable basis for an auditor's opinion of financial statements.

125. In the course of auditing Enron's financial statements during the Relevant Period, Andersen either knew or recklessly disregarded facts which indicated that it had failed to obtain sufficient competent evidential matter to afford a reasonable basis in opining on Enron's financial statements. Andersen's staff was frequently present at Enron corporate headquarters and had access to Enron's private and confidential financial and business information. Despite the availability of such records and information, Andersen failed to obtain, through inspection, observations, inquiries, confirmations and other audit procedures, sufficient competent evidential matter to afford a reasonable basis for its opinion on Enron's financial statements. As a result, Andersen issued unqualified opinions on Enron's financial statements for 1997, 1998, 1999 and 2000 when such financial statements materially overstated the Company's assets, net income, earnings per share, and stockholder's equity.

ANDERSEN IMPROPERLY ISSUED UNQUALIFIED AUDIT REPORTS

126. GAAS requires that an auditor's inability to obtain sufficient competent evidential matter constitutes a restriction on the scope of the audit that may require the auditor to qualify or disclaim

an opinion. Informative disclosures in financial statements – financial statement footnotes – are regarded as reasonably adequate unless otherwise stated in the auditor's report. When management omits disclosure required by GAAP from its financial statements, the auditor must express a qualified or adverse opinion and should provide the disclosure required in its audit report.

127. Andersen failed to issue a qualified or adverse opinion when Enron's financial statements omitted disclosures required by GAAP. As alleged above, the disclosures in Enron's financial statements of its assets, net income, earnings per share, and shareholder's equity did not conform with GAAP. The Individual Defendants caused the Company to fail to make disclosures in the notes to Enron's financial statements concerning the related party transactions as detailed, *supra.* Andersen's audit reports – in violation of GAAS – failed to disclose the material misrepresentations and, as a result, the financial statements which the Individual Defendants caused Enron to make and Andersen's audit opinions were false and misleading.

128. GAAS requires that an auditor must exercise due professional care in performing an audit and in preparing the audit report. GAAS also requires that each audit be planned and performed with an attitude of professional skepticism.

129. Andersen failed to exercise due professional care in the performance of its audit of Enron's financial statements during the Relevant Period. Andersen failed to adhere to professional standards by opining that Enron's financial statements were presented in conformity with GAAP when they were not, inadequately planning and supervising its audit, failing to obtain sufficient competent evidential matter, and improperly issuing unqualified audit reports.

KNOWLEDGE OF THE INDIVIDUAL DEFENDANTS

130. The Director and Executive Defendants, including, but not limited to, Lay, Skilling and

Fastow, constantly monitored the key factors affecting Enron's business. Due to certain of the Defendants positions as insiders who were top executives with Enron and involved in the day-to-day management of its business, such information was provided to the Director Defendants, and each Director Defendant actually knew from internal corporate documents and conversations with other corporate officers and employees and their attendance at management and/or Board and/or Committee meetings, the adverse non-public information about the false financial condition of Enron and the problems in the related party transactions. Each Director Defendant actually knew or recklessly disregarded that the public statements about Enron, as specified in this complaint, were false or misleading when made.

131. During all relevant times hereto, the Director and Executive Defendants occupied positions as top Enron executives and/or a member of the Board of Directors that made them privy to confidential and propriety, non-public information concerning Enron, its policies, operations, practices, finances, financial condition, profitability and present and future business prospects. Because of these positions and this access, the Director certain Individual Defendants knew or had access to the adverse facts specified herein, and knew that such adverse facts had not been disclosed to and were concealed from the public.

132. The Director and Executive Defendants, as corporate fiduciaries entrusted with managing the Company, are obligated to follow applicable laws, including federal and state securities laws, to ensure proper accounting of the Company's assets, liabilities, revenues, expenses and earnings, and disclose material adverse information regarding Enron in a timely and reasonable fashion.

133. By reason of their positions as officers, directors and/or fiduciaries of Enron and because of their ability to control the business and corporate affairs of Enron and/or their knowledge of

Enron's modus operandi, the Director Defendants owed Enron and its shareholders fiduciary obligations of fidelity, trust, loyalty and due care, and were and are required to use their utmost ability to control and manage Enron in a fair, just, honest and equitable manner, and were and are required to act in furtherance of the best interests of Enron and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interest or benefit. Each director, officer, and employee of Enron owes and owed to Enron the fiduciary duty to exercise due care and diligence in the administration of the affairs of Enron and in the use and preservation of its property and assets, and the highest obligations of good faith and fair dealing. In addition, as officers and/or directors of a publicly-held company, the Director, Executive and certain Employee Defendants had a duty to promptly disseminate accurate and truthful information with respect to the Company's operations, accounting practices, accounting policies, services, management, earnings, projections and forecasts so that the market price of the Company's common stock would be based on truthful and accurate information.

134. The Director and Executive Defendants, because of their positions of control and authority as directors and/or officers of Enron, were able to and did, directly and indirectly, control the improper and wrongful acts complained of herein, as well as the contents of the various public statements issued by the Company. Because of their advisory, executive, managerial and directorial positions with Enron, these Defendants were controlling persons of the Company and participated in the preparation and/or dissemination of the statements alleged to be false and/or misleading. These Defendants had access to the adverse non-public information about the Company's business, operations, finances, accounting practices, accounting policies, legal services policies, markets and present and future business prospects, as particularized herein, including without limitation, the fraud

which these Defendants caused Enron to engage in, by means of internal corporate documents, conversations or connections with other corporate officers or employees, attendance at Company management and/or Board of Directors meetings and committee meetings thereof, and via reports and other information provided to them in connection therewith.

135. At all material times hereto, the Director and Executive Defendants were the agents of other Director and Executive Defendants and of Enron, and each were at all times acting within the course and scope of said agency.

136. To discharge their duties as officers and directors of Enron, the Director and Executive Defendants were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the financial affairs of Enron. By virtue of such duties, these Defendants were required among other things, to:

(1) Manage, conduct, supervise and direct the business affairs of Enron in accordance with applicable state and federal law and rules and regulations and the charter and bylaws of Enron:

(2) Neither violate nor permit any officer, director, agent or employee of Enron to violate applicable state laws, federal laws, rules, regulations or Company charter or bylaws;

(3) Establish and maintain systematic and accurate books and records of the business and affairs of Enron and procedures for the reporting of the business and affairs to the Board of Directors, and periodically investigate, or cause independent investigation to be made of, said books and records;

(4) Maintain and implement an adequate and functioning system of internal financial and accounting controls, such that Enron's financial statements and information would be

accurate;

(5) Exercise reasonable control and supervision over the public statements made and/or issued to the securities markets relating to Enron;

(6) Remain informed as to the status of Enron's business, conditions, practices and operations, and upon receipt of notice or information of imprudent or unsound practices or operations, to make a reasonable inquiry in connection therewith, and to take steps to correct such practices or operations and make such disclosures as are necessary to comply with state and federal securities laws; and

(7) Supervise the preparation and filing of any audits, reports or other information required by law by Enron, and examine and evaluate any reports of examinations, audits or other financial information concerning the financial affairs of Enron, and make full and accurate disclosure of all material facts concerning, *inter alia*, each of the subjects and duties set forth above.

(8) As members of the Audit Committee, the Audit Committee Defendants had the responsibility to insure that the financial statements of the Company were based upon accurate financial information about the Company, and that those financial statements were properly prepared. Furthermore, the Audit Committee Defendants had the responsibility and failed in their responsibility to, *inter alia*:

(a) consult with the Company's independent auditors, Andersen, with respect to their audit plans;

(b) review the independent auditors' audit reports and the accompanying management letters;

(c) consult with the independent auditors with regard to financial reporting; and

(d) consult with the independent auditors with regard to the adequacy of internal controls.

137. In committing the wrongful and improper acts alleged herein, the Director and Executive Defendants have pursued, or joined in the pursuit of, a common course of conduct, and acted in concert with and conspired with one another in furtherance of their common plan or design. In addition to the wrongful and improper conduct herein alleged as giving rise to primary liability, certain Defendants further aided and abetted and/or assisted others in the breaching of fiduciary duties owed to Enron and its shareholders.

138. During all relevant times hereto, the Director, Executive and Employee Defendants initiated a course of conduct which was designed to and did: (a) maintain these Defendants' executive and directorial positions at Enron, and the profits, power and prestige which they enjoyed as a result of those positions, in spite of their violations of law and other fiduciary breaches (set forth herein); (b) inflate the Company's earnings and thus artificially the market price of Enron's securities during all relevant times; and (c) as a result expose Enron to millions of dollars of liability for violations of applicable state and federal securities laws. In furtherance of this plan, conspiracy and course of conduct, these Defendants took the actions as herein set forth.

139. The Director, Executive and Employee Defendants engaged in a conspiracy, common enterprise and/or common course of conduct, the purpose and effect of which was, *inter alia*, to disguise these Defendants' violations of law, breaches of fiduciary duties, and waste of corporate assets, to prolong the illusion of Enron's continuous success, to inflate the Company's earnings and price of the common stock of the Company and to conceal the adverse facts concerning the Company's business, financial condition and future business prospects, so that they could: (a) protect

and enhance their executive positions and the substantial compensation and prestige they obtained thereby; and/or(b) enhance the value of their personal Enron securities holdings. Such actions constituted breach of fiduciary duty, bad faith, and knowing violations of law.

140. The Director, Executive and Employee Defendants accomplished their conspiracy, common enterprise and/or common course of conduct that artificially inflated the price of Enron stock and manipulated the earnings of Enron through their accounting manipulations, the issuance of false and misleading, financial statements and press releases to the public, which manipulated, misrepresented and failed to disclose the true facts regarding Enron's operations, practices, expenses, revenues and earnings and its prospects for future financial performance. These Defendants were a direct, necessary and substantial participant in the conspiracy, common enterprise and common course of conduct complained of herein.

141. The Director, Executive and Employee Defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions, as particularized herein, to substantially assist the commission of the wrongdoing complained of, these Defendants acted with knowledge of the primary wrongdoing, substantially assisted the accomplishment of that wrongdoing, and was aware of his/her overall contribution to, and furtherance of, the wrongdoing. These Defendants' acts of aiding and abetting include, *inter alia*, the acts each of them are alleged to have committed in furtherance of the conspiracy, common enterprise and common course of conduct complained of herein.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

142. Plaintiffs bring this action derivatively in the right and for the benefit of Enron to redress injuries suffered and to be suffered by Enron as a direct result of the breaches of fiduciary duty,

knowing violations of law, bad faith, gross mismanagement, and waste of corporate assets, as well as the aiding and abetting thereof, by the Director, Executive and certain Employee Defendants. This is not a collusive action to confer jurisdiction on this Court which it would not otherwise have.

143. Plaintiffs will adequately and fairly represent the interests of Enron and its shareholders in enforcing and prosecuting its rights.

144. Plaintiffs were the owners of Enron stock during the period of the Defendants' wrongful course of conduct, and remain shareholders of the Company.

145. As a result of the facts set forth herein, demand on the Enron Board of Directors to institute this action against the directors of Enron is not necessary because such a demand would be a futile and useless act, particularly for the following reasons:

(1) The directors of Enron, as detailed herein, participated in, approved and permitted the wrongs alleged herein to have occurred and participated in efforts to conceal or disguise those wrongs from Enron's stockholders and are, therefore, not disinterested parties;

(2) Each director had a responsibility to review and authorize the publication of the press releases and filing of SEC reports detailed in this Complaint to have been false, and failed in that responsibility and chose to violate GAAP as specified, *supra*;

(3) In order to bring this suit, all of the directors of Enron would be forced to sue themselves and persons with whom they have extensive business and personal entanglements, which they will not do, particularly when the Company is about to merge with Dynegy, thereby excusing demand;

(4) The acts complained of constitute violations of state law and the fiduciary duties owned by Enron's officers and directors and are incapable of ratification;

(5) Directors of Enron authorized the issuance of various false and misleading statements and reports, and are the principal beneficiaries of the wrongdoing alleged herein, and thus could not fairly and fully prosecute such a suit even if such suit was instituted by them;

(6) Any suit by the directors of Enron to remedy these wrongs would likely expose the Defendants and Enron to further violations of securities laws which would result in civil actions or criminal actions being filed against one or more of the Director, Executive or Employee Defendants. Thus, the Directors cannot sue themselves. Indeed, they would be taking positions contrary to the positions that certain of them, including but not limited to Lay, Skilling and Fastow, have taken in the securities class action lawsuits. This is further evidence that demand is futile.

(7) Enron has been and will continue to be exposed to significant losses due to the wrongdoing complained of herein; yet, the Director Defendants have not filed any lawsuits against themselves or others who were responsible for that wrongful conduct which caused the filing of the securities class actions against Enron, nor have they attempted to recover for Enron any part of the damages Enron suffered and will suffer thereby;

(8) If the directors were to bring this derivative action against themselves, they would thereby expose their own misconduct which underlies allegations against them contained in the class action complaints for violations of federal securities law. Such admissions would impair their defense of the class action and greatly increase the probability of their personal liability in the class action, in an amount likely to be in excess of any insurance coverage available to the Director Defendants;

(9) That Director Defendants are covered by an insurance policy which covers the type of misconduct alleged herein, which policy would likely preclude coverage, if any, if these Defendants initiated action against any of the other Director or Executive Defendants named herein;

(10) Each Director Defendant is, directly or indirectly, the recipient of remuneration paid by the Company, the continuation of which is dependent upon their continued cooperation with the other members of the Board of Directors, and their participation and acquiescence in the wrongdoing set forth herein; and

(11) Six members of the Board of Directors are the Audit Committee Defendants. These directors were directly involved in the wrongdoing complained of herein. As members of the Audit Committee, these Defendants, Chan, Gramm, Jaedicke, Mendelsohn, Ferraz Pereira, and Wakeham were responsible for the accounting and auditing policies, procedures and function of the Company, which were a failure. As such, they breached the fiduciary duties they owed to the Company and are personally involved in the misconduct alleged in this complaint. Thus, they are inherently conflicted, not disinterested and could not have properly considered a shareholder demand in this case.

146. Plaintiffs have not made any demand on the shareholders of Enron to institute this action since such demand would be a futile and useless act for the following reasons:

(1) Enron is a publicly traded company with many thousands of shareholders;

(2) Making demand on such a number of shareholders would be impossible for Plaintiffs, who have no way of finding out the names, addresses or telephone numbers of shareholders; and

(3) Making demand on all shareholders would force Plaintiffs to incur huge expenses assuming all shareholders could even be individually identified.

COUNT I

CONTRIBUTION AND INDEMNIFICATION

147. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

148. Enron is alleged to be liable to various persons, entities and/or classes by virtue of the same facts or circumstances as are alleged herein to give rise to Defendants' liability to Enron.

149. Enron's alleged liability on account of the wrongful acts and practices and related misconduct described above arises, in whole or in part, from the knowing, reckless, disloyal and/or bad faith acts or omissions of the Individual Defendants and Andersen as alleged above, and Enron is entitled to contribution and indemnification from all of the Defendants in connection with all such claims that have been, are or may in the future be asserted against Enron by virtue of Defendants' misconduct.

COUNT II

ENRON'S MANAGEMENT'S RESPONSIBILITY FOR AND KNOWING FAILURE TO IMPLEMENT AND MAINTAIN ADEQUATE INTERNAL ACCOUNTING CONTROLS

150. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

151. The Director Defendants and defendant Skilling were responsible for implementing and maintaining sufficient accounting controls to prevent violations of GAAP and to accurately report Enron's financial results. Instead, however, these Defendants chose to violate GAAP as specified,

supra, and realleged here. It is well settled that the representations made by a company in its financial statements and in other financial disclosures to the public are the representations of that company's management. Indeed, even when a company issues audited financial statements together with the report of that company's independent auditors, that report always expressly provides that "the financial statements are the responsibility of [the company's] management.

152. According to SEC rules, to accomplish the objectives of accurately recording, processing, summarizing and reporting financial data, a company must establish an internal control structure. Pursuant to §13(b)(2) of the Exchange Act, Enron was required to:

(1) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and

(2) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that –

(a) transactions are executed in accordance with management's general or specific authorization;

(b) transactions are recorded as necessary ... to permit preparation of financial statements in conformity with generally accepted accounting principles ...

153. Moreover, according to Appendix D to Statement on Auditing Standards No. 55, *Consideration of the Internal Control Structure in a Financial Statement Audit* ("SAS 55"), management should consider, among other things, such objectives as (i) making certain that "[t]ransactions are recorded as necessary ... to permit preparation of financial statements in conformity with generally accepted accounting principles ... [and] to maintain accountability for assets," and (ii) making certain that "[t]he recorded accountability for assets is compared with the

existing assets at reasonable intervals and appropriate action is taken with respect to any differences."

154. As described in SAS 55, the applicability and importance of specific control environment factors, accounting system methods and records, and control procedures that an entity should establish should be considered within the context of such criteria as an entity's size, its organization and ownership characteristics, the nature of its business, the diversity and complexity of its operations, the entity's method of processing data, and its applicable legal and regulatory requirements. In short, the larger the entity, the more the nature of the entity's business is complex, diverse and sophisticated, and the public ownership of the entity customarily requires a sophisticated internal control structure to ensure that transactions are accurately recorded and that, prior to the public disclosure of any financial information, such transactions are compared to the existing assets (*e.g.*, comparing inventory as recorded on a company's books to those amounts actually "on hand") to eliminate any discrepancies between the recorded and actual amounts.

155. According to SAS 55.13:

Establishing and maintaining an internal control structure is an important management responsibility. To provide reasonable assurance that an entity's objectives will be achieved, the internal control structure should be under ongoing supervision by management to determine that it is operating as intended and that it is modified as appropriate for changes in conditions.

156. Contrary to the requirements of GAAP and SEC rules, the Director and Executive Defendants failed to implement and maintain an adequate internal accounting control system. In order to facilitate and to attempt to conceal their wrongdoing, these Defendants have caused Enron to maintain an inadequate system of internal financial and accounting and auditing controls such that

Enron's assets have not been reasonably safeguarded against misuse.

157. Further, Regulation S-X (17 C.F.R. §210.4-01(a)(1)) states that financial statements filed with the SEC which are not prepared in compliance with GAAP are presumed to be misleading and inaccurate. Regulation S-X requires that interim financial statements must also comply with GAAP, with the exception that interim financial statements need not include disclosure which would be duplicative of disclosures accompanying annual financial statements. 17 C.F.R. §210.10-01(a).

158. Due to these improprieties by the Director and Executive Defendants, the Company presented its financial results and statements in a manner which violated GAAP, including the fundamental accounting principles, specified supra at ¶¶92-93.

159. Further, the undisclosed adverse information concealed by the Director Defendants during the Relevant Period is the type of information which, because of SEC regulations, regulations of the national stock exchanges and customary business practice, is expected by investors and securities analysts to be disclosed and is known by corporate officials and their legal and financial advisors to be the type of information which is expected to be and must be disclosed.

160. Enron's Board of Directors operated as a collective entity through periodic meetings in person or telephonically, including meetings during the Relevant Period, where the Board discussed matters affecting business and reached collective and consensual decisions as to what actions to take.

161. As a result of the Director Defendants' wrongful and illegal actions, including their abuse of control and their gross mismanagement, Defendants' violations of GAAP, violations of federal and state securities laws, and the failure to maintain a system of internal financial and accounting controls adequate to ensure the preservation of the Company's assets (including both tangible and

intangible assets), Enron has suffered considerable damage to and drastic diminution in the value of its tangible and intangible assets.

162. Enron has expended and will continue to expend significant sums of money as a result of the illegal and improper actions described above. Such expenditures will include, but are not limited to:

(1) Costs incurred to carry out internal investigations, including legal fees paid to outside counsel and its auditors;

(2) Costs and legal fees for defending Enron, its officers and its directors against private class action litigation arising from the illegal and improper conduct alleged herein.

(3) Costs and legal fees in defending itself in the formal SEC investigation into its accounting improperties.

COUNT III

DERIVATIVE CLAIM AGAINST ALL INDIVIDUAL DEFENDANTS FOR BREACH OF FIDUCIARY DUTY OF LOYALTY AND DUE CARE

163. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

164. The Director Defendants and defendant Skilling intentionally, knowingly, and/or recklessly breached their fiduciary duties to the Company and to its shareholders by failing to implement and maintain sufficient accounting controls to prevent violations of GAAP, by choosing to violate GAAP by not consolidating the special purpose entities financial results into Enron's financial statements, recognizing the issuance of stock in exchange for a note, and creating these special purpose entities in order to keep indebtedness off Enron's balance sheet in order to make the

Company's financial statements more attractive to investors, lenders and businesses that Enron engaged in transactions with. Further, the Director Defendants and defendant Skilling allowed and approved the structure of the financial transactions with LJM1 and LJM2 and other SPEs. In these transactions, the interests of LJM1, LJM2, the other SPEs and Fastow conflict with the interests of Enron. By approving the financial relationships, the Director Defendants and defendant Skilling inappropriately acted for the interests of other entities, and created a circumstance where the interests of Enron's CFO were adverse to Enron, all at the expense of Enron. The Director Defendants and defendant Skilling knew that if they disclosed the facts set forth above, the disclosures would cause the market price of Enron's stock to be lower and would cause a loss of investor confidence which would in turn jeopardize these Defendants' positions, impair the value of their Enron holdings, irreparably impairing Enron's ability to secure needed capital and/or cause a reduction in bonuses and salaries and other forms of remuneration paid to these Defendants.

165. Defendant Fastow (and the other five Employee Defendants) breached their fiduciary duties of loyalty to Enron by forming, operating, and/or owning interests in LJM1 and LJM2 and other SPEs while they engaged in substantial transactions with Enron. Fastow's active and central role as the managing member of the general partner of these two investment partnerships severely compromised the fiduciary duty of loyalty he owes, as Enron's CFO, to Enron and Enron's shareholders.

166. The Director Defendants and defendant Skilling breached their duty of due care to Enron because they allowed and approved the structure of the financial transactions with LJM1 and LJM2, and other SPEs. Specifically, the Director Defendants and Skilling knowingly or recklessly failed to prevent defendant Fastow from breaching his duty of loyalty to Enron through his involvements

with LJM1 and LJM2, and other SPEs, while serving as the CFO of Enron.

167. Ignoring the concerns and criticisms voiced by many observers, the Director Defendants and defendant Skilling knowingly and recklessly approved substantial transactions with LJM and LJM2, and other SPEs, despite the fact that the financial transactions with those entities were reported by Enron in violation of GAAP, and put Enron's employees in a position to profit at the expense of Enron. It is unprecedented for a senior corporate officer like Fastow to engage in billions of dollars of transactions with his employer on behalf of purportedly unaffiliated investment entities.

168. As officers and/or directors of a publicly held company, the Director Defendants and defendant Skilling had a duty to follow GAAP and disseminate accurate and truthful information promptly with respect to Enron's operations, practices, financial condition and earnings. Instead, they knowingly violated GAAP, inflated the Company's earnings, and concealed their wrongdoing, as a result thereof, disseminated false and misleading statements and reports about Enron.

169. As a result of the foregoing, Enron, the subject of major securities fraud class action lawsuits by defrauded investors, has lost market share, has had its reputation in the business community irreparably tarnished and has thus been damaged.

170. The Director Defendants and defendant Skilling, in their roles as executives and directors of Enron, participated in the acts alleged herein, and knowingly, willfully, and/or intentionally disregarded adverse facts known to them, and did nothing to reveal them. They thereby knowingly violated the law, in bad faith, and breached their fiduciary duties of care, loyalty, accountability and disclosure to Enron and its shareholders and have exposed Enron to liability.

171. The Director Defendants and defendant Skilling each owed a fiduciary duty to Enron to monitor Enron's accounting and disclosure procedures and to ensure that they were performed in a

competent and professional manner. The Director Defendants and defendant Skilling breached that fiduciary duty and permitted Enron to violate the law.

172. The Director Defendants and defendant Skilling owed a fiduciary duty to supervise the issuance of Enron's press releases and public filings to ensure that they were truthful and accurate and that they conformed with federal and state law. The Director Defendants and defendant Skilling breached their fiduciary duty by knowingly violating GAAP, and by failing to properly supervise and monitor Enron's accounting practices and the adequacy of its internal financial controls and by allowing misleading statements and filings to be issued and made. As a result of these decisions, including the failure to disclose on a timely basis materially adverse information about Enron's condition, they have caused damage to Enron.

173. The Director Defendants Defendants each further owed a fiduciary duty to Enron and to Enron stockholders to seek redress from those whose conduct has and will cause the Company to expend its assets and whose conduct has otherwise precipitated the bringing of actions against the Company. The Director Defendants have not done so.

174. The conduct outlined herein was not due to an honest error of judgment, but rather was due to the Director Defendants' bad faith, and was done knowingly, willfully and/or intentionally.

175. The Director Defendants and Executive Defendants each have breached and/or aided and abetted breaches of fiduciary duties owed to Enron and its shareholders.

176. As a direct result of the Director Defendants and Executive Defendants' misconduct regarding the accounting practices and policies, the accounting manipulations and the disclosure procedures, Enron has suffered and will continue to suffer damages in the form of liability to, *inter alia*, purchasers of Enron's securities for violations of the Federal Securities laws and other damages

as alleged in this Complaint.

COUNT IV

DERIVATIVE CLAIM AGAINST ALL INDIVIDUAL DEFENDANTS FOR WASTE OF CORPORATE ASSETS

177. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as if though fully set forth herein.

178. As a result of the tortious conduct described above, the Director Defendants and Executive Defendants have wasted corporate assets of the Company.

179. The Director Defendants chose to violate GAAP by not consolidating the special purpose entities financial results into Enron's financial statements, recognizing the issuance of stock in exchange for a note, and creating these special purpose entities in order to keep indebtedness off Enron's balance sheet in order to make the Company's financial statements more attractive to investors, lenders and businesses that Enron engaged in transactions with, and thus made false and misleading public statements and filed false and misleading SEC filings which contained inflated earnings in the Company's financial statements. These were knowing violations of law, and knowing violations of GAAP and reporting standards. Thus, the Director Defendants' and Executive Defendants' actions have wasted corporate assets by subjecting the Company to multiple securities fraud class action lawsuits, lost market share, and lost investor confidence and credibility. The Company will pay millions of dollars to investigate these accounting manipulations, and in litigating the securities fraud class action lawsuits. The Company was also caused to publish and report false and misleading financial statements, which have resulted in the waste of corporate assets to pay for

defense attorneys and pay other litigation costs related to the securities fraud class action litigation. Thousands of dollars have been already spent, and millions more will be spent from the Company's accounts because of the Director Defendants and Executive Defendants knowing violations of law and bad faith. All such amounts will be a waste of corporate assets. They have caused the Company to incur expenses of thousands of dollars in investigating, defending, and appealing the formal SEC investigation. This has been a waste of corporate assets.

COUNT V

DERIVATIVE CLAIM AGAINST ALL INDIVIDUAL DEFENDANTS FOR GROSS MISMANAGEMENT

180. Plaintiffs incorporate by reference and reallege each and every allegation contained above as though fully set forth herein.

181. As detailed more fully herein, the Director Defendants and Executive Defendants each have and had a duty to Enron and it shareholders to prudently supervise, manage and control Enron's operations.

182. The Director Defendants and Executive Defendants by their actions, either directly or through aiding and abetting, abandoned and abdicated their responsibilities and duties with regard to prudently managing the assets of Enron in a manner consistent with the operations of a publicly-held corporation.

183. By subjecting Enron to the unreasonable risk of liability by failing to maintain sufficient accounting controls to prevent violations of GAAP and by choosing to violate GAAP by not consolidating the special purpose entities financial results into Enron's financial statements, recognizing the issuance of stock in exchange for a note, and creating these special purpose entities

in order to keep indebtedness off Enron's balance sheet in order to make the Company's financial statements more attractive to investors, lenders and businesses that Enron engaged in transactions with which inflated the Company's earnings and then improperly reporting the Company's financial condition, the Director Defendants and Executive Defendants breached their duties of due care and diligence in the management and administration of Enron's affairs and in the use and preservation of Enron's assets.

184. The Director Defendants and Executive Defendants caused the Company to engage in these actions, and were aware of the problems and probable losses associated with such. During the course of the discharge of their duties, the Director Defendants and Executive Defendants knew or should have known of the unreasonable risks and losses associated their actions, yet the Director Defendants and Executive Defendants caused Enron to engage in this scheme which they knew had an unreasonable risk of material loss to Enron, thus breaching their duties to both Enron and its shareholders. As a result, the Director Defendants and Executive Defendants grossly mismanaged and/or aided and abetted the gross mismanagement of Enron and its assets.

185. As a proximate result thereof, Enron has been damaged and will continue to suffer damages, and has sustained and will continue to sustain irreparable injury for which it has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment as follows:

1. Declaring that the individual Defendants have committed breaches of their fiduciary duties to Enron, wasted corporate assets, violated GAAP and/or caused the Company to violate GAAP, and grossly mismanaged Enron; and, that Andersen violated GAAS, that Andersen's conduct

was reckless or intentional, that it failed to plan and supervise its audits adequately, that it failed to obtain sufficient competent evidential matter, and that it improperly issued unqualified audit reports;

2. Requiring all individual Defendants and Andersen to pay Enron the amounts by which the Company has been damaged by reason of the conduct and violations of law complained of herein;

3. Requiring all of the individual Defendants to return to Enron all salaries, fees and the value of other remuneration of whatever kind paid to them by the Company during the time they were in breach of the fiduciary duties they owed to Enron;

4. Directing the Director Defendants to establish and maintain effective compliance programs to ensure that Enron's directors, officers and employees, as well as the partners and employees of its related partnerships do not engage in wrongful and illegal practices;

5. Directing Defendants to pay interest at the highest rate allowable by law on the amount of damages sustained by the Company as a result of Defendants' culpable conduct;

6. Awarding Plaintiffs the costs and disbursements of this action, including reasonable attorneys and experts fees;

7. Awarding Enron punitive damages for the Individual Defendant's oppressive and intentional acts; and

8. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

DATED: November 19, 2001.

Kenneth D. McConnico

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Attorney in charge for Plaintiffs

VERIFICATION

I am the plaintiff in this shareholder derivative action, and I was an Enron shareholder at the time that the events alleged to have taken place in this Complaint occurred. Also, I continue to hold my shares. I believe the factual allegations in the Complaint to be true based upon my personal knowledge and my counsel's investigation. Having received a copy of this Complaint, having reviewed it with my counsel, I hereby authorize its filing.

David Trzebucki Cheryl Trzebucki

David Trzebucki -Cheryl Trzebucki

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personal knowledge. Plaintiffs' information and belief is based, *inter alia*, on the investigation made by and through their counsel.

NATURE OF THE ACTION

1. This is a shareholder derivative action arising out of the falsification of Enron Corp.'s (hereinafter referred to as "Enron" or the "Company") 1997,1998,1999, 2000 and First and Second Quarter 2001 financial statements. This action is brought by shareholders of Enron on the Company's behalf, against the Board of Directors of Enron (hereinafter referred to collectively as the "Director Defendants") and Defendants, Jeffrey J. Skilling, Enron's former Chief Executive Officer, Andrew S. Fastow, Enron's former Chief Financial Officer (Skilling and Fastow may be referred to collectively hereinafter as "Executive Defendants"), and five additional former Enron officers and employees (hereinafter referred to collectively as "Employee Defendants"), Arthur Andersen LLP and Andersen Worldwide Societe Cooperative, a Swiss Cooperative (Enron's auditors, hereinafter referred to as "Andersen") seeking to remedy the individual defendants' breaches of fiduciary duty (including their knowing violations of Generally Accepted Accounting Principles ("GAAP") and knowing violations of federal and state securities laws, acts of bad faith, waste of corporate assets and other violations of Oregon law, and in the case of Andersen, its violations of "auditing standards generally accepted in the United States" ("GAAS"). During the Relevant Period[1] from October 19, 1998 through November 8, 2001, the Company's financial situation was deteriorating, but this was not publicly

[1]The Relevant Period only refers to the time in which the Director Defendants caused the Company to issue false and misleading statements, and does not define the total time period for which there will be discoverable evidence.

disclosed. On the contrary, certain officers and directors of Enron violated GAAP and/or caused the Company to violate GAAP, resulting in Enron overstating earnings, understating expenses, understating debt, and overstating shareholder equity. These Defendants materially falsified the Company's financial condition, made false and misleading public statements as well as SEC filings and/or caused Enron to make false or misleading statements and SEC filings concerning its financial condition. Andersen knew or recklessly disregarded Enron's true financial condition and failed to take steps to perform its public duty and contractual obligations to Enron and failed to fully and fairly disclose them to the public.

2. Plaintiffs allege that the Director Defendants Defendants breached their fiduciary duties of loyalty and due care by authorizing Fastow to engage in transactions, as a managing member of the general partner of two different limited partnerships and as members of those limited partnerships, that were adverse to Enron, and (with regard to Fastow) by engaging in those transactions that were adverse to Enron. These transactions resulted in Enron restating its financial statements for 1997-2000 with a reduction in income in excess of $100 million and a reduction in shareholders' equity of $1.2 billion. Five additional former Enron employees also participated in these transactions to their personal benefit - - to the detriment of Enron's financial interests. The Director, Executive and Employee Defendants caused Enron to violate GAAP and to report the transactions complained of herein in violation of GAAP, causing Enron's reported results and stock price to be inflated, and subjecting Enron to potential liability from investors.

3. Plaintiffs allege that Andersen, Enron's auditors, violated GAAS by breaching its duty of reasonable care to Enron by issuing "clean" opinion letters on Enron's 1997 through 2000 annual financial statements, although those financial statements violated GAAP. Andersen's violations of

GAAS and its breach of its duty of reasonable care, by continuing to issue clean opinion letters on the financial statements, and failing to correct Enron's issuance of year-end operating results, enabled the Director Defendants, Skilling, Fastow and the five Employee Defendants to perpetuate their misconduct and to cause additional harm to Enron. Further, Plaintiffs allege that Andersen failed to maintain the requisite independence mandated for a truly independent auditor. According to Enrons 2001 Proxy Statement filed with the SEC, Enron paid Andersen fees of $52 million during 2000, of which $25 million was reported as Principal Auditor Fees and $27 million for other fees related to business process and risk management consulting, tax compliance and consulting, due diligence procedures related to acquisitions or other activities, work performed in connection with registration statements and various statutory and other audits. It has been reported that Enron is Andersen's largest client with fees being charged to Enron of approximately $1 million a week. Yet, Enron and Andersen have represented that Andersen is independent. Andersen's actions and/or omissions facilitated the wrongdoing on the part of the remaining Defendants which resulted in significant damage to Enron.

4. The Director and Executive Defendants caused Enron to violate GAAP, *inter alia*, by failing to consolidate the financial results of "special purpose entities", failing to properly record the transactions involving the exchange of stock for a note, and recording gains on transactions that actually resulted in losses, as specified, *infra*. These accounting manipulations by these Defendants resulted in the Company's earnings being overstated. The "bullish" representations which certain officers and directors made and/or caused Enron to make artificially inflated Enron's stock to as high as $ 90.00 during the Relevant Period (10/19/98 - 11/08/01). Defendant Andersen approved these materially false and misleading financial statements.

5. Dynegy is named as a necessary party so that the Court can fashion complete relief on Plaintiffs' shareholder derivative claims.

6. The Company has been, and continues to suffer damage as a result of the individual Defendants' actions and the acts of omission and commission of Andersen. First, the Company paid increased salaries and bonuses based upon the alleged financial performance of the Company that the Defendants improperly inflated as well as the fees paid to Defendants Fastow, Kopper, Glisan, Mordaunt, Lynn, and Yaeger, as specified, *infra* and excess management fees to the related entities and/or provided personnel for the benefit of the "special purpose entities" ("SPEs")/partnerships. Second, the Company has spent thousands of dollars in expenses relating to its investigation into the wrongful actions of the individual Defendants. Third, the Company has spent significant sums of money dealing with the Securities and Exchange Commission's ("SEC") formal investigation into the accounting improprieties. This resulted in a waste of corporate assets. Finally, the Director and Executive Defendants caused the Company to issue and file materially false and misleading financial statements, which Andersen approved, that have caused the Company to be sued for securities fraud in many class action lawsuits (the "Class Actions"). The Class Actions have already cost the Company thousands, and will cost the Company millions more to satisfy.

7. The Company has also lost credibility in the marketplace and has seen its share price fall from a peak price of $90.00 per share during the Relevant Period to as low as $7.00 per share.

8. The Company should not have to bear these enormous financial burdens caused by the individual Defendants who breached the fiduciary duties that they owed to Enron by violating GAAP and by the Director and Executive Defendants who issued false and misleading financial statements for the Company, and Andersen whose violations of GAAS caused enormous damage to the

Company .

JURISDICTION AND VENUE

9. The claims asserted herein are based upon substantive Oregon common law and Ore. Rev. Stat. § 60.261 and 63.801. This Court has jurisdiction over all causes of action asserted herein pursuant to 28 U.S.C. §1332 in that complete diversity of citizenship exists between the parties and the matter in controversy exceeds the sum of $75,000, exclusive of interest and costs, and Rule 23.1 of the Federal Rules of Civil Procedure authorizing derivative actions by shareholders to remedy the Defendants violations of state common law.

10. This Court has jurisdiction over each Defendant named herein. Enron is an Oregon corporation with its principal executive offices located at 1400 Smith Street, Houston, Texas 77002-7369. Many of the individual Defendants are residents of Texas.

11. Venue is proper in this Court because Enron conducts business in and maintains operations in this District.

PARTIES

12. Plaintiffs David Trzebucki and Cheryl Trzebucki are residents of New York and have been at all relevant times, owners of Enron common stock, and continue to hold such stock.

13. Nominal defendant Enron is an Oregon corporation with its principal executive offices located at 1400 Smith Street, Houston, Texas 77002-7369. Enron is the largest buyer and seller of natural gas, and the top wholesale power marketer in the United States. In addition to operating a 25,000-mile gas pipeline system in the United States, it also markets and trades in commodities such as electricity, weather futures, metals, paper, coal, chemicals, and fiber-optic bandwidth.

14. Defendant Robert A. Belfer is a resident of New Jersey and has been a director of Enron

since 1983.

15. Defendant Robert P. Blake, Jr. is a resident of Colorado and has been a director of Enron since 1993.

16. Defendant Ronnie C. Chan is a resident of China and has been a director of Enron since 1996.

17. Defendant John H. Duncan is a resident of Texas and has been a director of Enron since 1985.

18. Defendant Wendy L Gramm is a resident of Texas and has been a director of Enron since 1993.

19. Defendant Robert K. Jaedicke is a resident of California and has been a director of Enron since 1985.

20. Defendant Kenneth L. Lay is a resident of Texas and has been a director of Enron since 1985. For over thirteen years, he has been Chairman of the Board and Chief Executive Officer of Enron.

21. Defendant Charles A. LeMaistre is a resident of Texas and has been a director of Enron since 1985.

22. Defendant John Mendelsohn is a resident of Texas and has been a director of Enron since 1999.

23. Defendant Paulo V. Ferraz Pereira is a resident of Brazil and has been a director of Enron since 1999.

24. Defendant Frank Savage is a resident of Connecticut and has been a director of Enron since 1999.

25. Defendant John Wakeham is a resident of Great Britain and has been a director of Enron since 1994.

26. Defendant Herbert S. Winokur, Jr. is a resident of Connecticut and has been a director of Enron since 1985.

27. Collectively, the Defendants identified in paragraphs 14-26 will be referred to as the "Director Defendants." The Director Defendants, through their positions as directors and/or senior officers of Enron and their receipt of reports, attendance at Board meetings and committees thereof, and access to all of the Company's books, records and other proprietary information, had responsibility for the management of Enron's business and operations.

28. Defendants Chan, Gramm, Jaedicke, Mendelsohn, Ferraz Pereira, and Wakeham(collectively the "Audit Committee Defendants") served as members of the Audit Committee of the Board of Directors during some or all of the times when the wrongs complained of herein occurred. Three of the audit committee members (Chan, Ferraz Pereira, and Wakeham) are foreign nationals.

29. Executive Defendant Andrew S. Fastow is a resident of Texas and was the Executive Vice President and Chief Financial Officer of Enron since July 1999. Fastow's employment with Enron was terminated in October 2001. Previously, from March 1998 to July 1999, he was the Senior Vice President and Chief Financial Officer of Enron. He also served as the Senior Vice President of Finance of Enron from January 1997 to March 1998. Fastow was also the founder and managing member of LJM Cayman LP ("LJM1") and LJM2 Co-Investment LP ("LJM2") since their formation in 1999 until July of 2001.

30. Executive Defendant Jeffrey K. Skilling is a resident of Texas and was, from 1997 to

August 2001, a director of Enron. From January 1997 until August 2001, Skilling served as President and Chief Operating Officer of Enron. Skilling remains a consultant to Enron and the Board of Directors.

31. Defendant Arthur Andersen LLP is one of the "Big 5" accounting firms and one of the largest in the United States, based in Chicago, Illinois and does business in this District. Arthur Andersen, LLP is a member of Anderson Worldwide Societe Cooperative, a Swiss Cooperative. Andersen was Enron's independent auditor. Andersen audited all the financial statements at issue in this complaint. According to published reports, Enron paid Andersen $25 million in audit fees and $27 million in other fees in the year 2000 and Enron was Andersen's largest client.

32. Defendant Dynegy, Inc. is an Illinois corporation with its principal executive offices at 1000 Louisiana, Suite 5800, Houston, TX 77002-5050. According to Dynegy's public statements, Dynegy provides energy and communications services in North America, the United Kingdom and continental Europe.

33. Employee Defendant Michael Kopper is a resident of Texas and was, until approximately July 2001, a non-executive officer of Enron.

34. Employee Defendant Ben Glisan is a resident of Texas and was, at all relevant times, a Managing Director and Treasurer of Enron.

35. Employee Defendant Kristina Mordaunt is a resident of Texas and was, until her employment was terminated in November 8, 2001, a Managing Director and General Counsel of an Enron division.

36. Employee Defendant Kathy Lynn is a resident of Texas and was, until approximately October 2001, a Vice President of an Enron division.

37. Employee Defendant Anne Yaeger is a resident of Texas and was, until her employment was terminated in November 8, 2001, a non-officer employee of Enron.

SUBSTANTIVE ALLEGATIONS

38. Beginning in approximately 1997, Enron began to form "off balance sheet" or "special purpose entities" ("SPEs") that were managed by its senior officers. Certain of these Partnerships were substantively owned by Enron. Included among those entities that were owned by Enron were Chewco Investments, L.P. ("Chewco"), and a wholly-owned subsidiary of LJM1.

39. According to GAAP, the financial statements of those entities that were substantively owned by Enron should have been consolidated with Enron's financial statements. The Individual Defendants, in violation of GAAP, caused Enron to fail to consolidate the operations of those SPEs. Among other things, consolidation would have required (a) that the SPEs' debt be reflected on Enron's financial statements, (b) that Enron common stock issued to those SPEs not be reflect as equity on Enron's financial statements, (c) that assets in the form of notes or pledges, transferred from the SPEs to Enron, not be reflected on the financial statements of Enron, and (d) any profit or loss on transactions between Enron and the SPEs not be recognized on Enron's income statement.

40. Some of the other SPEs had purportedly independent ownership (although they were also managed by Enron senior officers).

41. The SPEs were formed by Enron's senior officers with the approval of the Individual Defendants specifically for the purpose of having those SPEs engage in complex hedging derivative transactions, either with or on behalf of Enron, without Enron reporting those transactions on a consolidated basis. The impact of the acts by the Defendants in failing to have the Company report its financial statements on a consolidated basis was (a) to cause the Company to under-report its

debt, because Enron failed to include in its reported debt the debt of the controlled SPEs, (b) to cause the Company to over-report its equity and assets, because Enron included shares issued to the controlled partnerships in exchange for notes and other pledges on its balance sheet, and (c) to cause the Company to over-report revenue and income, because Enron included on its income statements revenue and income from transactions with the controlled SPEs without including corresponding expenses.

42. In addition to the SPEs that were substantively owned by Enron, in 1999, Enron's Board of Directors approved defendant Fastow's formation of two investment partnerships, LJM1 and LJM2 Co-Investment LP ("LJM2"). LJM1 and LJM2 are private investment companies that, according to Enron's public filings, engage in acquiring or investing in primarily energy-related investments. Fastow was the managing member of the general partner of each of the two partnerships.

43. Although LJM1, LJM2, and other SPEs were initially caused to be formed by the Individual Defendants to evade reporting requirements under SEC and accounting rules, ultimately they came to be used by certain Enron officers and other employees as vehicles for personal profit.

44. According to published reports, the general partner of the two investment partnerships was paid management fees as much as 2% annually of the total amounts invested in the partnerships. Additionally, the general partner was eligible for profit participation that could produce tens of millions of dollars more if the partnerships met their performance goals over their projected 10-year life. Inasmuch as the partnerships were formed with the intention of managing over $200 million in assets, defendant Fastow's potential profits from managing the partnerships exceeded $4 million a year.

45. The Director Defendants have caused Enron to publicly state in SEC filings that Fastow has made more than $35 million off of LJM1 and LJM2.

46. Since their formation, LJM1 and LJM2 engaged in billions of dollars of complex hedging transactions with Enron - in which Enron had adverse interests. By their very nature, Enron's transactions with these two investment partnerships, if successful, would result in losses to Enron.

47. The Employee Defendants Kopper, Glisan, Mordaunt, Lynn, and Yaeger also had investment and managerial interests in LJM1 and LJM2.

48. Fastow, as Enron's CFO, owed the Company and its shareholders a fiduciary duty of loyalty. The very nature of the transactions, with the partnerships (managed by Fastow) being adverse to Enron (with Fastow as its CFO), created a breach of Fastow's duty of loyalty to Enron and its shareholders. It is unprecedented, as here, for a senior corporate officer, such as Fastow, to engage in billions of dollars of transactions with his employer on behalf of affiliated investment entities.

49. The Employee Defendants Kopper, Glisan, Mordaunt, Lynn and Yaeger also owed Enron similar fiduciary duties.

50. Each of the members of Enron's Board has a fiduciary duty of loyalty and due care to the Company. The members of Enron's Board of Directors, in approving the structure of the transactions, breached their fiduciary duties of loyalty and due care to the corporation.

51. Because defendant Fastow (and at least four other employee-Defendants) were on both sides of the transactions between Enron and the investment partnerships, the terms of those transactions were not at arm's-length and there was no reasonable method to ensure that the terms of those transactions were equivalent to transactions that could have been engaged in with third

parties.

52. Specifically, in 1999, the Director and Executive Defendants caused Enron to enter into a series of complex transactions involving LJM1 and a third-party, pursuant to which (a) Enron and the third-party amended certain forward contracts to purchase shares of Enron common stock, resulting in Enron having forward contracts to purchase Enron common shares at the market price of the day of the agreement, (b) LJM1 received about 6.8 million shares of Enron common stock, and (c) Enron received a note receivable and certain financial instruments from LJM2 hedging an investment held by Enron.

53. During the fourth quarter of 1999, LJM2 acquired approximately $360 million of merchant assets and investments from Enron. Further, in December, 1999, LJM2 entered into agreements to acquire certain of Enron's interests and assets for about $45 million.

54. In 2000, the Director Defendants caused Enron to again enter into transactions with LJM1, LJM2, and entities related to LJM1 and LJM2, to hedge certain merchant investments and other assets. These Defendants caused Enron to contribute about $1.2 billion of assets, including notes payable and restricted shares of outstanding Enron common stock and warrants, to Enron related entities, Raptors 1-10. Additionally, these Defendants caused Enron to enter into derivative transactions with a combined amount of about $2.1 billion with Enron related entities to hedge certain assets.

55. The Company subsequently disclosed on November 8, 2001 (in a press release and SEC filing) that it now believes that Michael Kopper, a non-executive officer of Enron, was the controlling partner of a limited partnership that (through another limited partnership) in March 2000 purchased interests in affiliated subsidiaries of LJM1. Enron also disclosed that it now believes that

four of the six limited partners of the purchaser were, at the time of the investment, non-executive officers or employees of Enron, and a fifth limited partner was an entity associated with Mr. Fastow. These officers and employees, and their most recent job titles with Enron, were Ben Glisan, Managing Director and Treasurer of Enron.; Kristina Mordaunt, Managing Director and General Counsel of an Enron division; Kathy Lynn, Vice President of an Enron division; and Anne Yaeger, a non-officer employee.

56. Enron stated in the November 8 press release and SEC filing that these former Enron employees received distributions or other payments from LJM1 as a result of transactions between Enron and LJM1.

57. Fastow, Kopper, Glisan, Mordaunt, Lynn, and Yaeger have been cryptically referred to by defendant Lay as six former employees of Enron who unlawfully profited at Enron's expense: "I'm sorry these six people seem to have gone somewhat over the edge in their dealing or transactions...."

58. Notwithstanding the actual conflicts of interest, and the magnitude of the business dealings, the Director Defendants approved the structure of the financial relationships between Enron, LJM1, and LJM2. Among other things, the Director Defendants approved Fastow's formation of LJM1 and LJM2, and his participation as the managing member of the general partner of these two partnerships.

59. The formation of the limited partnerships for the benefit of Fastow, and the nature of the transactions between Enron and those partnerships, was subject to numerous criticisms by investors beginning in the Spring of 2001. As reported in TheStreet.com on May 9, 2001, "one area of the company's financial statements ... that consistently bugs analysts is the part that describes Enron's

related party transactions.... In fact, one of the related entities that Enron has traded with is headed by Enron's CFO, Andrew Fastow." One energy analyst was quoted by The Street as commenting "Why are they doing this? It's just inappropriate."

60. In fact, the LJM2 offering document, which was prepared under the direction of defendant Fastow, admitted that the responsibilities of Mr. Fastow and other partnership officials to Enron could "from time to time conflict with fiduciary responsibilities owed to the Partnership and its partners." As reported by The Wall Street Journal on October 17, 2001, some institutions determined not to invest in LJM1 because of the potential conflicts.

61. As reported in TheStreet.com on July 12, 2001, there was much "chatter" about the transactions with LJM1 and LJM2. When questioned about the impact of these transactions on Enron's earnings for the second quarter of 2001, defendant Skilling misrepresented the true state of affairs by replying only that LJM1 and LJM2 had done "a couple of real minor things."

62. Although not publicly disclosed until October 2001, in response to the consistent criticism of the transactions between Enron and LJM1 and LJM2, in July 2001, Fastow terminated his interests in the partnerships, and Enron unwound its financial relationships with the partnerships.

63. On September 9, 2001, The New York Times further reported that Enron shares, which were down 62 percent in 2001 as of that date, "may not recover as long as the company's financial disclosures remain difficult for analysts and investors to interpret." The New York Times quoted James Chanos, president of the hedge fund Kynikos Associates, as stating: "'The stock is trading under a cloud." The Times further reported that Enron had sold assets and securities to "closely related" companies, including one controlled by its chief financial officer, and offered few details on the transactions. Such agreements can "provide a convenient way for public companies to shift

losses to private affiliates," the paper said.

64. On October 16, 2001, investors were shocked by the announcement that Enron was taking a $1.01 billion charge primarily connected with write-downs of impaired assets and soured investments. The $1.01 billion charge caused an unprecedented third quarter loss of $618 million.

65. In a craftily worded press release, issued on October 16, 2001, the Individual Defendants caused Enron to acknowledge that the Company was required to recognize "non-recurring charges," including "$544 million related to losses associated with [among other things] early termination during the third quarter of certain structured finance arrangements with a previously disclosed entity."

66. The Wall Street Journal, in a news report on October 17, 2001, stated that the cryptic reference in the press release was to the "pair of limited partnerships that until recently were run by Enron's chief financial officer." According to The Wall Street Journal, Enron privately acknowledged that its transactions with those partnerships resulted in write-downs of $35 million.

67. Defendant Lay also acknowledged in a conference call after issuance of the October 16, 2001 press release, that Enron would take a $1.2 billion writedown to shareholders' equity relating to a "removal of an obligation to issue a number of shares."

68. On October 18, 2001, The Wall Street Journal reported that in a conference call on October 17, 2001, defendant Lay stated that 55 million shares had been repurchased by Enron, as the company "unwound" its participation in the transactions with certain of the SPEs.

69. According to Rick Causey, Enron's chief accounting officer, these shares had been contributed to a "structured finance vehicle" set up in 1999 in which Enron and LJM2 were the only investors. In exchange for the stock, LJM2 provided Enron with a note. When Enron reacquired

the 55 million shares, it also cancelled the note from the partnership.

70. The Director Defendants failed to disclose this huge reduction in assets and shareholder's equity attributable to Enron's transactions with the investment partnerships, either in the October 16, 2001 press release or on the October 16, 2001 conference call, in an apparent consciousness of guilt of their wrongful conduct.

71. On November 8, 2001, Enron issued a press release and filed a Form 8-K with the SEC (the "November 8 Statement") acknowledging that it was required to restate its financial statements for the years ended December 31, 1997 through 2000 and the quarters ended March 31 and June 30, 2001.

72. The primary reason for the restatement was Enron's conclusion that three so-called "special purpose entities" (Chewco, Joint Energy Development Investments Limited Partnership ("JEDI"), and a wholly-owned subsidiary of LJM1) did not meet certain accounting requirements and their financial results should have been consolidated in Enron's financial statements. These special purpose entities were caused to be created by the Individual Defendants for the purpose of keeping certain indebtedness off Enron's balance sheet in order to make Enron's financial statements more attractive to investors, lenders and businesses with which Enron engaged in transactions.

73. The restatements involving Chewco resulted in a reduction in net income of $548 million in the years 1997 to 2000. Chewco appears to have been created, controlled and financed by Enron. According to Enron's November 8 statement, Chewco purchased a limited partnership interest in JEDI for $383 million. $132 million of the purchase price was financed by an interest-bearing loan from JEDI, and $240 million was financed by a loan which Enron guaranteed. Michael Kopper, a "non-executive officer" of Enron, was the manager of Chewco's general partner. In short, Chewco

was financed and controlled by Enron, and in all probability was caused to be created by the Director and Executive Defendants or certainly with their knowledge and approval..

74. Enron, as a part of the restatement referred to, *supra*, has consolidated the results of an LJM1 subsidiary in 1999 and 2000 because the subsidiary had inadequate capitalization to qualify for non-consolidation treatment. The adequacy of the subsidiary's capitalization should have been scrutinized by the Director Defendants and Andersen in preparing Enron's financial statements in 1999 and 2000.

75. It was further disclosed in the November 8 Statement that Enron would restate its financial statements for the first two quarters of 2001 to reduce shareholders' equity by $1.2 billion, because it had, in violation of generally accepted accounting principles, recognized the issuance of the stock in exchange for a note. GAAP requires that notes received for the issuance of equity be recognized as a reduction of shareholders' equity, thus essentially having no effect on shareholders' equity.

76. As acknowledged in the November 8 Statement, four SPEs known as Raptor I-IV (collectively, "Raptor") were created in 2000, permitting Enron to hedge market risk in certain of its investments. As part of the capitalization of these entities, the Director Defendants caused Enron to issue common stock in exchange for a note receivable. There was no economic reality to this transaction because it was never intended that Raptor would exercise rights of ownership over the Enron stock. Rather, the stock was issued to Raptor to create the appearance that Raptor had sufficient capitalization to enter into transactions for Enron's benefit.

77. Enron's financial statements were further restated to include prior-year proposed audit adjustments and reclassifications (which Enron's auditor, Andersen, had previously determined

were to be immaterial in the year originally proposed). These transactions had been specifically reviewed by Anderson prior to its issuance of clean opinion letters on Enron's financial statements, notwithstanding that those financial statements were in violation of GAAP.

78. The restatements materially reduced Enron's net income, among other things, net income was reduced by the following amounts[2]:

	Net Income as Reported	Net Income Restated
1997	$105	$ 9
1998	703	590
1999	893	643
2000	979	847

79. Earnings per share and shareholders' equity were also materially reduced in each of the years 1997 to 2000.

80. In addition to the transactions that were restated by Enron, the November 8 Statement reflected a myriad of other transactions and a byzantine structure of interrelated SPEs. Analysts have commented that the potential exposure from the restatement of those transactions is in excess of $1 billion of net income and that an additional $6 billion of debt may be added to Enron's balance sheet.

81. For example, in another transaction described in Enron's November 8 statement, the Individual Defendants caused Enron to sell dark fiber optic cable to LJM2 in June 2000 for a purchase price of $100 million, $70 million of which was paid by a note. Enron recognized $67 million in pre-tax earnings from this sale. Enron then recognized an additional $20.3 million for acting as marketing agent for a sale of some of this fiber to others and for providing operation and

2 All numbers in millions.

maintenance services with respect to the fiber. LJM2 then sold the remaining fiber in December 2000 to yet another special purpose entity that was formed to acquire the fiber, using the proceeds to pay the note to Enron. The Director Defendants caused Enron to provide credit to the special purpose entity that purchased the fiber from LJM2.

82. Enron further disclosed in the November 8 Statement that another series of transactions between Enron and LJM1 and LJM2 resulted in Enron's recognizing $146 million and $5 million in pre-tax earnings in 2000 and 2001, respectively, and $252 million in cash inflows, all in 2000.

83. The series of transactions summarized in the November 8 Statement reflect an ongoing and continuous breach of fiduciary duty by the Director Defendants to the Company during the Relevant Period .

84. This series of related party transactions from which the Director Defendants caused Enron to recognize substantial revenue and earnings should have been carefully scrutinized by Andersen.

85. Anron's financial statements for the year ended December 31, 1997 were contained in Enron's annual report on Form 10-K, which the Director Defendants caused to be filed with the Securities and Exchange Commission (SEC) on or before March 31, 1998.

86. Enron's financial statements for the year ended December 31, 1998 were contained in Enron's annual report on Form 10-K, filed with the SEC on or before March 31, 1999.

87. Enron's financial statements for the year ended December 31, 1999 were contained in Enron's annual report on Form 10-K, filed with the SEC on or before March 31, 2000.

88. Enron's financial statements for the year ended December 31, 2000 were contained in Enron's annual report on Form 10-K, filed with the SEC on or before March 31, 2001.

89. As required by the SEC's instructions for Form 10-K, each of Enron's Forms 10-K were

signed by Defendants Lay and Skilling and the other Director Defendants. Defendant Fastow signed the Form 10-K for 2000 as Enron's Chief Financial Officer. The Director Defendants signed or caused Enron to file these materially false and misleading Form 10-Ks and documents that incorporated those financial statements by reference..

90. Enron's restatement of the 1997-2000 and First and Second Quarter 2001 financial statements is an acknowledgment that those financial statements were materially false and misleading and were not prepared in accordance with GAAP.

91. Significantly, the announcement of the restatements only addressed certain of Enron's transactions with Special Purpose Entities. The Director Defendants caused Enron, in its November 8 Statement, to specifically leave open the possibility of additional restatements based on the investigation by the Special Committee.

92. The SEC requires that publicly-traded companies present their financial statements in accordance with GAAP. 17 C.F.R. § 210.4-01 (a)(1). Financial statements filed with the SEC which are not prepared in accordance with GAAP "will be presumed to be misleading or inaccurate, despite footnote or other disclosures, unless the Commission has otherwise provided." 17 C.F.R. § 210.4-01(a)(1).

93. As a result of the accounting improprieties caused by the Director Defendants , Enron's reported financial results violated at least the following provisions of GAAP:

1. The principle that interim financial reporting should be based upon the same accounting principles and practices used to prepare annual financial statements was violated (APB No. 28, ¶10);
2. The principle that financial reporting should provide information that is useful to

present and potential investors and creditors and other users in making rational investment, credit and similar decisions was violated (FASB Statement of Concepts No. 1, ¶34);

3. The principle that financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and effects of transactions, events and circumstances that change resources and claims to those resources was violated (FASB Statement of Concepts No. 1, ¶40);

4. The principle that financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners (stockholders) for the use of enterprise resources entrusted to it was violated. To the extent that management offers securities of the enterprise to the public, it voluntarily accepts wider responsibilities for accountability to prospective investors and to the public in general (FASB Statement of Concepts No. 1, ¶50);

5. The principle that financial reporting should provide information about an enterprise's financial performance during a period was violated. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors' expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance (FASB Statement of Concepts No. 1, ¶42);

6. The principle that financial reporting should be reliable in that it represents what it purports to represent was violated. That information should be reliable as well as relevant is a notion that is central to accounting (FASB Statement of Concepts No. 2,